<u>REMARKS</u>

I.   STATUS OF THE CLAIMS

        Claims 1-24 are pending in the present Application. By the present amendment,

Claims 1, 3, 9, 12, 14, 17 and 19 have been amended. Claim 11 has been canceled without

prejudice of disclaimer of the subject matter therein. No new matter is added.

        In the Office Action, claims 9-16 are rejected under 35 U.S.C. § 102(e) (hereinafter,

"Section 102(e)") as being allegedly anticipated by U.S. Pat. No. 6,606,298 to Foltak

(hereinafter "Foltak").

        Claims 1-8 are rejected under 35 U.S.C. § 103(a) (hereinafter, "Section 103(a)") as

being allegedly unpatentable over Foltak in view of U.S. Pat. No. 6,151,628 to Xu et al.

(hereinafter "Xu").

        Claims 17-24 are rejected under Section 103(a) as being allegedly unpatentable over

Foltak in view of Xu and further in view of U.S. Pat No. 5,978,373 to Hoff et al. (hereinafter

"Hoff").

        Applicant respectfully traverses all rejections and requests reconsideration of the

subject application as amended herein.

II.   REJECTIONS UNDER 102(e), FOLTAK

        Claims 9-16 are rejected under Section 102(e) as being anticipated by Foltak.

Applicant respectfully submits that amended independent claim 9 and its dependent claims

10-16 are novel as they are not anticipated by Foltak. The cited reference does not teach each

and every element of these claims.

1.   CLAIM 9

By the present amendment, claim 9 has been amended to more clearly claim the embodiments of the Applicant's invention. Amended claim 9 now recites in part, "periodically checking availability of a second device management software by comparing a version of said second device management software against a version of said first device management software; and for the version of said second software device management that is a different version from said first software device management, automatically loading the second device management software, immediately following said checking, through said network for replacing said first software such that the device is self-maintaining."

Support for the amendment can be found in Applicant's specification in paragraph [0071] of the publication describing, "Once the communication link is established, the access point 143 activates a "version checker" program which requests and receives a version code from the server indicating the current version 167 of access point 143 management software loaded into the memory 161 of the server 153. The access point 143 processor 145 **compares the version 167 from the server 153 with the version 169 in the access point** 143 RAM 149 (Block 175). **If the versions 167 and 169 are the same** in Block 177, then the access point returns to normal run operation via Block 179. **If the version 167 in the server 153 is different from the version 169** in the accession point 143 (Block 181), the access point 143 begins a shutdown operation 183. . . . When all connections are terminated the access point 143 continues (Block 185) and loads (Block 187) the new version 167 of the access point software from the server memory 161 into the access point 143 RAM 149, replacing version 169" (emphasis added). As described, code that differs is automatically replaced.

Foltak, in contrast, will recover or upgrade software only if a device is "determined to be 'bad'" and thereby "labeled or flagged as 'recovery pending' or 'upgrade pending'". A

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device is labeled as such if it is considered 'bad', and this occurs in one of two ways: 1) failure of a system-initiated test which determines if the modem is functioning properly; or 2) a device fails to negotiate a communication protocol a numerous consecutive amount of time. (Foltak, Col. 9, lines 42-62; Col. 10, lines 34-48; Col.12, lines 34-57).   Replacing demonstrably faulty devices, as in Foltak, inherently differs from automatically replacing different code, as in amended Claim 9, "by comparing a version of said second device management software against a version of said first device management software".   There is simply no teaching or suggestion of maintaining software occurring in Foltak based on a version check of the second software against the first software, rather there is only teaching of an upgrade based on a determination of a "bad" device.

Applicant has reviewed the Action's cited sections in Foltak, and notes that Foltak describes upgrades may occur when there is a need for such and with an up-to-date version, however "a need for upgrading" fails to teach the manner in which the replacing of the software occurs as recited by claim 9.   The cited language in the Action, page 6, including Foltak, Fig. 5, col. 15, lines 1-62, only describes deeming a modem faulty based on number of consecutive call attempts over a threshold value. As such, Foltak fails to teach or suggest each and every limitation of amended claim 9. Accordingly, amended claim 9 is believed to be allowable over Foltak and Applicant respectfully requests withdrawal of the rejection of claim 9 under Section 102(e).

2.   DEPENDENT CLAIMS 10-16

Claim 10-16 depend directly or indirectly on independent claim 9 and thereby include all the limitations of amended claim 9, along with additional limitations. In particular, claim 13 recites, "A method as recited in claim 12 further comprising second authenticating an

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identity of said device to said server." The Action on page 7 cites to Foltak in Col. 5 line 52 –
Col. 6 line 5, and Col. 8 lines 42-60 as teaching the claim. However, Applicant respectfully
disagrees after reviewing the cited passages which are devoid of any authenticating. The cited
section only describes whether software should be recovered and/or upgraded, and how a
server downloads a data file of the software to a device, respectively. Accordingly, there is
no teaching or suggestion in Foltak of the required limitations in claim 13. As such, claims
10-16 are believed to be allowable for at least the same reasons as amended claim 9.

Applicant respectfully requests withdrawal of the rejections of claims 10-16 under
Section 102(e).

III.   REJECTIONS UNDER 103(a), FOLTAK IN VIEW OF XU

Claims 1-8 are rejected under Section 103(a) as being unpatentable over Foltak in
view of Xu. Applicant respectfully submits that the amended independent claim 1 and its
dependent claims 2-8 are novel and patentable over Foltak in view of Xu. The cited
references do not teach each and every element of these claims.

1.   CLAIM 1

Amended Claim 1 now recites in part, "(ii) software loading apparatus for
automatically loading second software through said network for replacing said first software,
and directly begins loading upon checking that said first software requires replacement due to
a comparison determining the first software contains code that is different from the second
software, without manual maintenance by a user such that the access point device is self-
maintaining."

Support for the amendment can be found in Applicant's specification in paragraph [0071] of the publication as described above in detail with respect to amended claim 9. (Response, section II, Point 1).

The arguments above with respect to amended claim 9, apply here to amended claim 1, in that Foltak fails to teach each and every claimed limitation of amended claim 1. Foltak teaches determination of a "bad" device by 1) failure of a system-initiated test which determines if the modem is functioning properly; or 2) a device fails to negotiate a communication protocol a numerous consecutive amount of time. (Foltak, Col. 9, lines 42-62; Col. 10, lines 34-48; Col.12, lines 34-57). Replacing demonstrably faulty devices, as in Foltak, does not teach the required "checking that said first software requires replacement due to a comparison determining the first software contains code that is different from the second software..." as recited in amended claim 1.

Applicant has reviewed the cited sections of the Action regarding Foltak, and there is no teaching or suggestion of ALL the limitations of amended claim 1 to find a prima facie of obviousness. Neither does Xu provide for the deficiencies of Foltak. Accordingly, for the reasons stated above, amended claim 1 is believed to be allowable over Foltak in view of Xu. Applicant respectfully requests withdrawal of the rejection of claim 1 under Section 103(a).

2.   DEPENDENT CLAIMS 2-8

Claims 2-8 depend directly or indirectly on independent claim 1 and thereby include all the limitations of amended claim 1, along with additional limitations. Accordingly, claims 2-8 are believed to be allowable for at least the same reasons as amended claim 1 and also for the limitations these claims recite. For instance, amended claim 3 recites in part, a "version checker apparatus for checking a version of said second software against a version of said first

software." Foltak does not teach such a limitation and again, only describes devices

recovered or updated by determining "bad" devices which failed conditions. Accordingly,

for these reasons, claims 2-8 are believed patentable and Applicant respectfully requests

withdrawal of the rejections of claims 2-8 under Section 103(a).

IV.   REJECTIONS UNDER SECTION 103(a), FOLTAK, XU AND HOFF

        Claims 17-24 are rejected under Section 103(a) as being unpatentable over Foltak in

view of Xu and further in view of Hoff. Applicant respectfully submits that the amended

independent claim 17 and its dependent claims 18-24 are novel and patentable. The cited

references do not teach each and every element of these claims.

        1. CLAIM 17

        Amended Claim 17 now recites in part, "(ii) access device loading apparatus for

loading second device management software through a network for replacing said first

software due to a comparison determining the first software contains code that is different

from the second software, without manual maintenance by a user such that the access point

device is self-maintaining..."

        Support for the amendment can be found in Applicant's specification in paragraph

[0071] of the publication as described above in detail with respect to amended claim 9 and

claim 1. (Response, section II, Point 1, and section III, Point 1).

        The arguments above with respect to amended claims 9 and 1, apply here to amended

claim 17, in that Foltak fails to teach each and every claimed limitation of amended claim 17.

Foltak teaches determination of a "bad" device by 1) failure of a system-initiated test which

determines if the modem is functioning properly; or 2) a device fails to negotiate a

communication protocol a numerous consecutive amount of time. (Foltak, Col. 9, lines 42-62;

Col. 10, lines 34-48; Col.12, lines 34-57).   Replacing demonstrably faulty devices, as in

Foltak, does not teach the required "replacing said first software due to a comparison

determining the first software contains code that is different from the second software…" as

recited in amended claim 17.

Applicant has reviewed the cited sections of the Action regarding Foltak, and there is

no teaching or suggestion of ALL the limitations of amended claim 17 to find a prima facie of

obviousness. Neither does Xu nor Hoff provide for the deficiencies of Foltak. Accordingly,

for the reasons stated above, amended claim 17 is believed to be allowable over Foltak in

view of Xu and further in view of Hoff. Applicant respectfully requests withdrawal of the

rejection of claim 17 under Section 103(a).

2. DEPENDENT CLAIMS 18-24

Claims 18-24 depend directly or indirectly on independent claim 17 and thereby

include all the limitations of amended claim 17, along with additional limitations.

Accordingly, claims 18-24 are believed to be allowable for at least the same reasons as

amended claim 17. Applicant respectfully requests withdrawal of the rejections of claims 18-

24 under Section 103(a).

Conditional Request For Constructive Assistance

Applicant has made a diligent effort to amend the claims of this application so that

they define novel and unobvious subject matter. If, for any reason, the Examiner believes that

the claims of this application are not yet in full condition for allowance, applicant respectfully

requests his constructive assistance and suggestions pursuant to the spirit of MPEP § 2173.02

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and § 707.07(j). This will enable the undersigned to place this application in fully allowable

condition as soon as possible and without the need for further proceedings. The Examiner is

authorized to make any needed minor corrections or changes.

V.   CONCLUSION

       The above-discussed remarks are believed to place the present Application in

condition for allowance. Should the Examiner have any questions regarding the above

amendments, the Examiner is requested to telephone Applicant's representative at the number

listed below.

                                             Respectfully submitted,

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